

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*ECF CASE*

-----X  
LOCAL 456, INTERNATIONAL BROTHERHOOD :  
OF TEAMSTERS, :

Plaintiff, :

—against— :

ALL ROCK CRUSHING, INC., :

Defendant. :

Case No. 08–Civ.–1894(SCR)

**AFFIDAVIT OF ANDREW  
MACKLE IN OPPOSITION  
TO DEFENDANT’S MOTION  
TO VACATE ARBITRATION  
AWARD**

-----X  
STATE OF NEW YORK )  
) ss.:  
COUNTY OF WESTCHESTER )

ANDREW MACKLE, being duly sworn, deposes and says:

1. That I am Fund Manager since February 2005 of the Westchester Teamsters Allied Benefit Funds (the “Funds”) affiliated with plaintiff Local 456, International Brotherhood of Teamsters (“the Union”), and I make this affidavit in opposition to the defendant’s motion to vacate a certain arbitration award, and in support of confirmation and enforcement of the award.

2. I am familiar with the Opinion and Award of Arbitrator Susan Panepento dated January 8, 2008 (“the Award”) which provided that Jeffrey Beck be made whole for lost earnings after his lay-off on February 2, 2007, less interim earnings. I make this affidavit to set forth the calculations of the benefits contributions on his behalf that he would have earned; the benefits contributions on his behalf that he did earn from interim employment; and the net amount of benefits contributions due.

3. As Fund Manager, I ultimately control and am responsible for all Funds records of benefits fund contribution rates under various types of collective bargaining agreements, including heavy construction, fuel oil and building materials. I am fully familiar with calculation

of benefits contributions due under the Union's collective bargaining agreements based on hours worked or estimated to have been worked.

4. Attached hereto as Exhibit "A" is a worksheet entitled "Monthly Statement of Overdue Contributions". The underlying software formula is generally used to calculate benefits contributions owed by an employer based on its respective contractual rates and reports of actual hours worked.

5. In this instance, I entered into the formula hours based on 40 hours per week (the regular work week) for 4 weeks per month for the months from February 2007 through May 2008. This is a conservative estimate, since there are actually more than 4 weeks per month on the average.

6. Based on the foregoing assumptions, as shown in Exhibit "A", I calculated that All Rock would have contributed \$46,296.00 in benefits contributions on behalf of Beck from February 2007 through May 2008.

7. Fund records can also be sorted by employee member. Attached as Exhibit "B" is the "Employee Register From 02/1/2007 To 05/31/2008".


8. The Employee Register shows all hours reported for Beck by all employers under contract with the Union. Based on those hours, I calculated the moneys paid in by each employer under the respective type of Union contract; for example, heavy construction or fuel oil. Those moneys are entered and totaled on a spreadsheet attached as exhibit "C".

9. The total amount of benefits contributions received on behalf of Beck for this period is \$29,612.85.

10. Thus, the net amount due under the Award in order to make Beck whole for benefits equals: \$46,296.00 (§6 above) - \$29,612.85 (§9 above) = \$16,683.15.

11. There is a possibility of a slight downward modification of this estimate in the event that we receive contributions for hours worked by Beck in May; such contributions, if any, are just now coming due.

SWORN to before me this  
25 day of July, 2008.

  
\_\_\_\_\_  
ANDREW MACKLE

  
\_\_\_\_\_  
Notary public

JANINE PUGLIS  
Notary Public, State of New York  
No. 01PU6160110  
Qualified in Rockland County  
Commission Expires January 29, 2011

**Monthly Statement of Overdue Contributions**

Westchester Teamsters  
160 S. Central Ave.  
Elmsford, N.Y. 10523

Name: ALL ROCK ESTIMATE  
Street:  
City:  
Industry: H - HEAVY CONSTRUCTION

Interest As of: 07/23/2008

**CONTRIBUTIONS**

Contributions: \$46,296.00  
Interest Due : \$2,306.82

Owner:  
Phone:

Notes:

<u>Date</u>	<u>Period Ending</u>	<u>Total Hrs</u>	<u>Max 40</u>	<u>Contrib Due</u>	<u>Fund Interest</u>	<u>Attorney Interest</u>	<u>Date Paid</u>	<u>Amt Paid</u>	<u>Fund Interest</u>	<u>Date Paid</u>	<u>Interest Paid</u>	<u>Code</u>
06/15/07	02/28/07	160.00	160.00	2800.00	275.51	333.04						
07/15/07	03/31/07	160.00	160.00	2800.00	257.74	311.56						
08/15/07	04/30/07	160.00	160.00	2800.00	239.37	289.35						
09/15/07	05/31/07	160.00	160.00	2800.00	221.60	267.87						
10/15/07	06/30/07	160.00	160.00	2800.00	203.23	245.66						
11/15/07	07/31/07	160.00	160.00	2936.00	194.47	235.08						
12/15/07	08/30/07	160.00	160.00	2936.00	175.77	212.47						
01/15/07	09/30/07	160.00	160.00	2936.00	156.45	189.12						
02/15/07	10/31/07	160.00	160.00	2936.00	137.75	166.51						
03/15/08	11/30/07	160.00	160.00	2936.00	104.07	143.16						
04/15/08	12/31/07	160.00	160.00	2936.00	127.78	154.46						
05/15/08	01/31/08	160.00	160.00	2936.00	71.21	97.95						
06/15/08	02/28/08	160.00	160.00	2936.00	54.23	74.59						
07/15/08	03/31/08	160.00	160.00	2936.00	37.80	51.99						
08/15/08	04/30/08	160.00	160.00	2936.00	20.81	28.63						
09/31/08	05/31/08	160.00	160.00	2936.00	29.03	39.93						
Statement Totals:				46296.00	2306.82	2841.37		0.00		0.00		0.00

07/23/2008  
JEFFREY BECK  
1 WHITE HILL ROAD  
HUNAM VALLEY NY 10579-  
TEL# - (914) 602-1006

RETIRED : NO  
ANNUITY VESTED: YES  
PENSION VESTED: NO CREDITS: 4.750  
COMPENSATION :  
DISABILITY :  
SUSPENSION :  
TRANSFER :  
WITHDRAWL :

D.O.B. - 07/25/1958  
DEATH -  
LOCAL - 10/15/2002  
DIVSN - TEAMSTER  
STEWARDS- YES  
MARITAL- MARRIED  
DEPEND#- 3  
SEX - MALE

07/28/2008

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ORDERED BY ENDING DATE

RECEIVE ENDING  
DATE DATE EMPRNO N A M E

TOTAL

STRAIGHT

MAX 45

ANN DED

V/H TOT

V/H STR

CAP MAO

WEL

PEN

SUB

DUE

IAF

LEG

ANN

PAF

EXT

HOURS

RATES

CLASSIFICATION HISTORY

DIVISION STATUS

DATE

04/16/07 03/31/07 02025 BURKE FUEL & HEATING 36.00 36.00

36.00 36.00

36.00 4.45 5.80

0.80

0.15 5.25

0.05 0.05

06/02/07 04/28/07 30550 YONKERS CONTR./DRAGA 16.00 16.00

16.00 16.00

16.00 5.50 5.60

0.80

0.30 0.20

5.00 0.05 0.05

08/10/07 04/30/07 00663 PECKHAM ROAD CORP. 10.00 10.00

10.00 10.00

10.00 5.50 5.60

0.80

0.30 0.20

5.00 0.05 0.05

08/29/07 04/30/07 02025 BURKE FUEL & HEATING 8.00 8.00

8.00 8.00

8.00 4.45 5.80

0.80

0.15 5.25

0.05 0.05

08/11/07 05/23/07 00663 PECKHAM ROAD CORP. 31.00 31.00

31.00 31.00

31.00 5.75 5.35

0.80

0.30 0.20

5.00 0.05 0.05

10/01/07 05/26/07 30355 BYRAM CONCRETE 11.00 11.00

11.00 11.00

11.00 5.75 5.35

0.80

0.30 0.20

5.00 0.05 0.05

08/20/07 05/27/07 05015 ECCO III ENTERPRISES 57.00 57.00

57.00 57.00

57.00 5.75 5.35

0.80

0.30 0.20

5.00 0.05 0.05

06/29/07 05/30/07 00213 JOKEN DEVELOPMENT CO 36.00 36.00

36.00 36.00

36.00 5.75 5.35

0.80

0.30 0.20

5.00 0.05 0.05

07/02/07 05/30/07 02006 BILLOTTA CONST. CORP. 19.00 19.00

19.00 19.00

19.00 5.75 5.35

0.80

0.30 0.20

5.00 0.05 0.05

06/15/07 05/31/07 30571 INTERSTATE+LAKELAND 47.10 47.10

47.10 47.10

47.10 4.20 3.30

0.65

0.05

07/16/07	06/30/07	30571	INTERSTATE+LAKELAND	189.80	160.00			160.00	4.20	3.30	0.65	0.05
08/17/07	07/30/07	30571	INTERSTATE+LAKELAND	179.60	158.20		187.60	160.00	4.20	3.85	0.65	0.05
09/19/07	08/31/07	30571	INTERSTATE+LAKELAND	223.10	196.10				4.20	3.85	0.65	0.05
10/09/07	09/30/07	30571	INTERSTATE+LAKELAND	131.00	118.70		163.00	143.50	4.20	3.85	0.65	0.05
11/07/07	09/30/07	30039	BRENNAN CONSTRUCTION	66.00	57.00				6.10	5.85	0.80	0.30
11/13/07	10/27/07	00268	ANDRON CONST. CORP.	8.00	8.00				6.10	5.85	0.80	0.30
11/13/07	10/27/07	00555	A & J CIVIL/PLT, IN	20.00	20.00				6.10	5.85	0.80	0.30
11/18/07	10/27/07	00588	BEN CICCONE INC.	10.00	10.00				6.10	5.85	0.80	0.30
12/03/07	10/27/07	25002	YONKERS CONTR., CO.	71.00	71.00				6.10	5.85	0.80	0.30
12/12/07	10/31/07	30039	BRENNAN CONSTRUCTION	33.00	33.00				6.10	5.85	0.80	0.30
12/21/07	11/24/07	30522	CCA CIVIL/HALMAR INT	8.00	8.00				6.10	5.85	0.80	0.30
12/21/07	11/24/07	30522	CCA CIVIL/HALMAR INT	8.00	8.00				6.10	5.85	0.80	0.30
12/01/07	11/25/07	30404	STONE AND WEBSTER	96.00	88.00				6.10	5.85	0.80	0.20
02/03/08	11/25/07	00300	B.M.B. LEASING CORP.	16.50	16.50				6.10	5.85	0.80	0.20
02/27/08	11/25/07	30136	EASTERN EXCAVATION	8.00	8.00				6.10	5.85	0.80	0.30
01/03/08	11/30/07	02006	BILOTTA CONST. CORP.	2.00	2.00				6.10	5.85	0.80	0.30
01/04/08	11/30/07	30189	INTER COUNTY SUPPLY	8.00	8.00				4.20	3.85	0.65	0.05
01/14/08	12/30/07	30404	STONE AND WEBSTER	180.50	152.00				6.10	5.85	0.80	0.20
01/22/08	01/12/08	30459	WESTCHESTER IND. SUP	34.75	34.75		413.70	360.20				
01/25/08	01/19/08	30459	WESTCHESTER IND. SUP	26.50	26.50				3.95	3.85	0.65	0.05
02/01/08	01/26/08	30459	WESTCHESTER IND. SUP	9.25	9.25				3.95	3.85	0.65	0.05
02/14/08	01/31/08	30404	STONE AND WEBSTER	129.00	124.00				6.10	5.85	0.80	0.20

[illegible]

**Hours Reported and Paid for Jeff Beck  
2/2007 Thru 5/2008**

Period	Reg Hours	Total Hours	Cash Contributed
Feb-07	0.00	0.00	\$0.00
Mar-07	36.00	0.00	\$376.20
Apr-07	34.00	34.00	\$503.80
May-07	201.10	201.10	\$3,076.82
Jun-07	160.00	189.00	\$1,280.00
Jul-07	158.20	179.60	\$1,923.00
Aug-07	196.10	223.10	\$1,627.65
Sep-07	175.70	197.00	\$2,041.08
Oct-07	142.00	142.00	\$2,605.70
Nov-07	130.50	130.50	\$2,394.69
Dec-07	129.00	124.00	\$2,280.90
Jan-08	194.50	199.50	\$2,830.81
Feb-08	120.00	120.00	\$2,202.00
Mar-08	192.00	197.00	\$3,528.70
Apr-08	160.00	165.00	\$2,941.50
May-08	0.00	0.00	\$0.00
<b>TOTAL</b>			<b>\$29,612.85</b>